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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,347	01/05/2005	Tadasu Kiriara	MIN-04-1348	5485

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IP GROUP OF DLA PIPER RUDNICK GRAY CARY US LLP
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EXAMINER

MAI, NGOCLAN THI

ART UNIT	PAPER NUMBER
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1742

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/520,347

Applicant(s)

KIRIHARA ET AL.

Examiner

Ngoclan T. Mai

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/5/05, 2/17/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 3-5, 9, 10, are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 5, 7, 8 and 10 of copending Application No. 10/523,448. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the constituents recited in the claims of the instant application are claimed in the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3, 4, 5, 9, and 10 are rejected under 35 U.S.C. 102(a) as being anticipated by Omori et al. (US 2002/0064476), now Omori.

Omori discloses niobium powder comprising at least one element selected from the group consisting of chromium, molybdenum and tungsten in the range of about 0.01 to about 10 mol% , [0069], which when converted to mass % is equivalent to 0.06 to 6% by mass Cr, 0.1 to 10% by mass Mo and 0.18 to 18% by mass W. The powder disclosed has a specific surface area, preferably, about 1 to about 10 m²/g [0084] and the powder is in granulated form having mean particle size of about 10 μm to about 500 μm [0103]. The powder can be formed into sintered body, i.e., anode for electrolytic capacitor [0103] as recited in claims 4, 5, 9 and 10 of the instant application.

5. Claims 1, 3-5, 9, and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Wada et al. (U.S. Patent No. 6,780,218, now Wada).

Wada discloses niobium powder comprising niobium and alloying component selected from the group consisting of components that include chromium, molybdenum and tungsten, col. 4, lines 8-23. Particularly disclosed in the reference is niobium powder containing W in the amount of 20,000 ppm which equivalent to 2% by mass, TABLE 1, example 8. The niobium powder disclosed has specific surface area of from 0.5 to 40 m²/g, col. 4, lines 34-35 and is being in granulated form having average particle size ranging from 10-500 μm, col. 5, lines 23-27. The niobium powder is used for forming anode for capacitor, abstract.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 6-7, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Omori.

Omori teaches niobium powder substantially as claimed. The difference between the claims and Omori is that that Omori does not specifically teach niobium powder further containing magnesium and/or aluminum.

Omori however teaches niobium powder containing aluminum as an alloying component to reduce the leakage current. Aluminum can be present in the amount of 0.01 to about 10 mol %, which when converted to mass % is about 0.03 to 3.0% by mass [0108]. Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine known ingredient having known functions, to provide a composition having the additive effect of each of the known functions is within realm of performance of ordinary skill artisan. In re Castner, 186 USPQ 213 (217).

8. Claims 2, 6-7, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wada.

Wada teaches niobium powder substantially as claimed. The difference between the claims and Wada is that that Wada does not specifically teach niobium powder further containing magnesium and/or aluminum.


Wada however teaches niobium powder containing aluminum as an alloying component in the amount of 3900 ppm or 0.39% by mass, TABLE 1, example 11. Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine known ingredient having known functions, to provide a composition having the additive effect of each of the known functions is within realm of performance of ordinary skill artisan. In re Castner, 186 USPQ 213 (217).

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ngoclan T. Mai whose telephone number is (571) 272-1246. The examiner can normally be reached on 9:30-6:00 PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ngoclan T. Mai
Primary Examiner
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n.m.